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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,821	02/28/2002	Charles J. Lantz	L 0102	8631

7590 01/23/2004

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EXAMINER

SHRIVER II, JAMES A

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary	Application No. 10/084,821	Applicant(s) LANTZ, CHARLES J.	
	Examiner J. Allen Shriver	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,3 and 13-20 is/are allowed.
- 6) ☒ Claim(s) 1 and 4-11 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's submittal of an amendment was received on October 31, 2003, wherein claims 1-2, 6, 8 and 13-14 were amended.

Drawings

2. The new replacement drawings were received on October 31, 2003. These drawings are approved.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 4-5 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badger (US Patent 4,632,411).** Badger discloses a shopping cart (11) for carriage of merchandise selected for purchase in grocery markets, department stores and the like comprising a wheeled carriage (12), a rectangular basket (13) and an underlying support (29) for said basket included on said carriage, said basket being made of resin (resin is used in plastics) and said support comprising a U-shaped metal channel member extending in bridging relationship across the width of said carriage in support of said basket (See Figs. 4-5). Badger does not specifically

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disclose the metal channel member being U-shaped in cross section. At the time of the invention was made, it would have been obvious to a person of ordinary skill in the art to use a metal channel member having a U-shaped cross-section in substitution for the round cross-section metal channel disclosed in Badger. Applicant has not disclosed that using a U-shaped cross-section metal channel over a circular cross-section metal channel provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in this art, furthermore, would have expected Applicant's invention to perform equally well with either the U-shaped cross-section metal channel member or a circular cross-section metal channel member to support the basket of the cart, because either type of cross-section configuration would provide adequate support for the shopping cart's basket and the plastic resin used for the making the basket can be molded into any configuration to perfectly match the selected cross-section for the metal channel member. Therefore, it would have been obvious to a one of ordinary skill in this art to modify Badger to obtain the invention as specified in claim 1.

Regarding claim 4, Badger discloses said carriage comprises a frame including a pair of U-shaped side channel members (17) spaced across the width of said carriage extending horizontally from the rear end of said carriage to its front end (See Fig. 1), a front bumper block (18) extending across the width of said carriage to which the front ends of said spaced horizontal channel members are secured, said channel member of said support being mounted on said horizontal channel members in upwardly extending bridging relation under said basket between said two horizontal side channel members (See Figs. 1-3); [**claim 5**] in which a handle (64) is provided at the rear upper edge of said basket extending between the two sides of said resin

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basket; in which the back of the basket is pivotally supported directly from said handle and arranged for its bottom to be swung forward and upwardly within said basket about said handle.

Regarding claim 8, Badger discloses the shopping cart as set forth above and discloses a separate upwardly extending basket reinforcing channel member (62) each connected to one of the side channels and extending into engagement with the interior of a side of said basket (See Fig. 4 where the channel member is engaged with the interior of a side of the basket), but does disclose each of said upwardly extending members having a lower end projecting below the channel member to which it is connected and having a separate wheel mounted at the lower end of each of said lower ends. Badger discloses the upwardly extending channel member being attached to another channel member (24) that extends below the channel members and having a wheel attached at the lower end. At the time of the invention, it would have been obvious to a person of ordinary skill in this art to combine the two upwardly extending channel members disclosed in Badger, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Regarding claim 9, Badger discloses an upper cross-brace member (65) extending between said spaced upwardly extending members which engages the rear edges of the bottom of said basket in supporting relation therewith; wherein said underlying support comprises a channel member mounted in spanning relation between said side channel members in underlying communication with the bottom of said basket in a region forward of said upper cross bracing member whereby said basket is supported in stable relation by said supporting channel member and said upper cross-bracing member in combination with said upwardly extending members;

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and wherein a pair of spaced wheels (21) are swivelably mounted in the underside of said bumper block.

5. **Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badger (US Patent 4,632,411) in view of Nadeau et al. (US Patent 6,540,240 B2).** Badger discloses a shopping cart as set forth above having a back basket made up metal, but does not disclose wherein the back of the basket is made of resin material and is pivotally supported directly from said handle and arranged for its bottom to be swung forward and upwardly within said basket about said handle. Nadeau discloses wherein the back of the basket (150) is made of resin material and is pivotally supported directly from said handle and arranged for its bottom to be swung forward and upwardly within said basket about said handle (See Figs. 14-16). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to make the back of the basket disclosed in Badger out of a resin material as taught by Nadeau et al. The motivation for doing so would have been to make the entire basket out of the resin material, which make the entire basket more weather resistant.

Regarding claim 7, Badger includes a foldable child seat having a front member at its bottom in pivoted relation with said basket back, said seat having a generally horizontal seat member pivotally supported on said basket front arranged for upward pivotal movement and folding into said basket back, said horizontal seat member having an underlying pivot rod connected to said seat front arranged to limit the movement of said seat back when said seat platform in extended in fully unfolded position.

Allowable Subject Matter

6. Claims 2-3 and 13-20 are allowable over the prior art. Regarding claim 14, the prior art does not show wherein each of said interior surfaces of the opposite sides of said basket is provided with a groove oriented and sized to receive in snug fit relation one of said upwardly extending metal channel members. Regarding claim 2, the prior art does not disclose a pair of U-shaped channel members from the rear of said carriage extending upwardly and forwardly from opposite sides of said carriage into said basket in merged reinforcing relation with the opposite interior surface of said side walls of said basket. The prior art shows a tubular member from the rear of the carriage extending along the outside of the basket, and does not show the channel being U-shaped and in merged reinforcing relation with the interior surfaces of the side walls of the basket.

Regarding claim 13, the prior art does not disclose a pair of U-shaped channel members from the rear of said carriage extending upwardly and forwardly from opposite sides of said carriage into said basket in merged reinforcing relation with the opposite interior surface of said side walls of said basket. The prior art shows a tubular member from the rear of the carriage extending along the outside of the basket, and does not show the channel being U-shaped and in merged reinforcing relation with the interior surfaces of the side walls of the basket.

7. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Response to Arguments

8. Applicant's arguments with respect to claims 1, 4-6 and 7-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

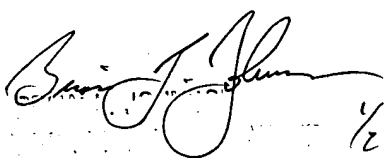
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

J. Allen Shriver
Examiner
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JAS 1/21/04
JAS


1/22/04